माननीय छत्तीसगढ़ उच्च न्यायालय बिलासपुर छ0ग0

सिविल रिव्हिजन क्रमांक 91/2005 Single Bench

आवेदकगण :- 1. रमेश कुमार आयु 26 वर्ष आत्मज श्री गिरधारीलाल
उत्तरवादीगण 2. दिलीप कुमार आयु 47 वर्ष आ0 श्री गिरधारीलाल
3. राजेन्द्र कुमार आयु 37 वर्ष आ0 श्री गिरधारीलाल
4. प्रदीप कुमार आयु 32 वर्ष आ0 श्री गिरधारीलाल
5. सतीष कुमार आयु 29 वर्ष आ0 श्री गिरधारीलाल
6. शिवकली बाई आयु 62 वर्ष बेवा श्री गिरधारीलाल
सभी जाति कश्यप, सभी निवासी तेलीपारा बिलासपुर छ0ग0।

बनाम

अनावेदकगण :- 1. श्री ओमप्रकाश दुआ आयु 68 वर्ष आत्मज
अपीलार्थी श्री सीताराम दुआ, साकिन गौंड़पारा,
बिलासपुर, तहसील व जिला बिलासपुर छ0ग0।
2. छत्तीसगढ़ शासन,
द्वारा-जिलाध्यक्ष, बिलासपुर छ0ग0

सिविल रिव्हीजन अंतर्गत धारा 115 व्य.प्र.स. 1908

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आदेश पत्रक

मामला क्रमांक C.R.No.91/05 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

19/10/2005

Shri Sudhir Agrawal, Counsel for the applicants.

None for non-applicant No.1.

Shri J.D. Bajpai, Govt. Advocate for the non-applicant No.2/State.

Heard on admission.

Applicants filed a civil suit against non-applicants for declaration. The said suit was registered as Civil Suit No.176-A/2001. Both the non-applicants remained ex parte in that suit. The Court of 5th Civil Judge, Class I, Bilaspur, passed ex parte judgment and decree on 13/12/2002 decreeing the suit in favour of applicants. Non-applicant No.1 filed an application under Order IX, Rule 13 of the C.P.C., for setting aside the ex parte decree. The proceeding was registered as M.J.C.No.5/2003 and the application was allowed by the Court on 24/10/2003. The Court set aside the ex parte judgment and decree dated 13/12/2001 passed in Civil Suit No.176-A/2001 and restored the suit. Applicants filed an application under Section 152 read with Section 151 of the C.P.C., for setting aside the order dated 24/10/2003 passed in M.J.C.No.5/2003 on the ground that non-applicant No.1 colluding with the process server concocted false report regarding service of notice and thereby succeeded in obtaining the order dated 24/10/2003. The application was opposed by non-applicant No.1. The 5th Civil Judge, Class I, Bilaspur, decided the application vide order dated 05/11/2004 passed in Misc. Case No.1/2004 vide which allowed the application and set aside the ex parte order passed on 24/10/2003 in Misc. Civil Case No.5/2003. Being aggrieved with that

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

order non-applicant No.1 preferred Misc. Appeal bearing No.1/2005. The appeal was heard by the First Additional District Judge, Bilaspur, who vide impugned order dated 07/05/2005 allowed the appeal and set aside the order passed by the Court below in Misc. Civil Case No.1/2004 on 05/11/2004.

Amended Section 115 (1) of the C.P.C. reads as below.

> ***"115.Revision.-(1)*** *The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-*
>
> *(a) to have exercised a jurisdiction not vested in it by law, or*
>
> *(b) to have failed to exercise of its jurisdiction so vested, or*
>
> *(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,*
>
> *the High Court may make such order in the case as it thinks fit:*
>
> *(Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed*

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of the suit or other proceedings".

Hon'ble the Apex Court rendering judgment in **Shiv Shakti Cooperative Housing Society, Nagpur Vs. Swaraj Developers and others) reported in (2003) 6 SCC 659** has observed in para 32 which reads as below.

> *"32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is "yes" then the revision is maintainable. But on the contrary, if the answer is "no" then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision under Section 115. There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32 (2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation".*

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

From the law laid down by the Apex Court as well as the amended provision of Section 115 of the CPC, it is apparent that the order challenged, if it had been passed in favour of the applicant, it would have been finally disposed of the proceeding in that case only the revision was maintainable. It is crystal clear that despite the order if made in favour of the party applying for revision, it appears that it would not finally dispose of the proceeding.

At this stage, learned counsel for the applicants submits that he wants to withdraw this petition with liberty to take appropriate remedy under the law and prays to return the certified copy of the impugned order annexed to petition, to which non-applicant No.2/State has no objection.

Considered. Allowed.

Certified copy of the impugned order annexed to petition be returned to the applicants on substitution of photocopy of the same.

The revision is dismissed as withdrawn with aforesaid liberty.

Sd/-
V.K.Shrivastava
Judge

Raju

(पीछे देखिये)